

into account anticipated developments in establishing policy. Moreover, some of these services are imminent. <sup>66/</sup>

The remainder of NCRA's arguments are meritless. For example, citing to the Herfindahl-Hirschman Index ("HHI"), NCRA claims that the cellular industry is enormously concentrated. <sup>67/</sup> While the HHI is used by the Department of Justice as a factor in measuring a market's concentration for merger analysis under Section 7 of the Clayton Act, <sup>68/</sup> the index does not measure market power -- which is the relevant issue for the Commission's review of CTIA's Petition. The existence of a concentrated market is not the equivalent of a finding that there is no competition in a given market. Moreover, there are literally hundreds of distinct cellular operators, and the Commission has concluded that "individual cellular service companies do not possess market power in the sale of cellular service on a national level." <sup>69/</sup> This is even more true with respect to the market for interstate interexchange service.

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<sup>66/</sup> For example, Fleet Call has announced that its Enhanced Specialized Mobile Radio service will be introduced in Los Angeles in August of this year, and the service will be initiated in the San Francisco Bay Area and most of California by January. Systems covering New York City and Chicago are expected to be on line by Mid-1994.

<sup>67/</sup> NCRA Comments at 20.

<sup>68/</sup> 15 U.S.C. §§ 12-27.

<sup>69/</sup> Bundling of Cellular Customer Premises Equipment and Cellular Service, 7 FCC Rcd. 4028, 4030 (1992).

C. NCRA Recommends the Wrong Remedy In Any Event

NCRA contends that requiring cellular licensees to file tariffs as dominant carriers will further the public interest. <sup>70/</sup> This assertion is directly at odds with prior Commission pronouncements and logic. Taking NCRA's arguments at face value - i.e., that competition in the cellular industry is marginal - the answer to this alleged problem surely is not to give the two facilities-based operators more information about each other's prices and services. Adopting rules that would require one carrier in a duopoly market to submit detailed tariffs that would inform the other carrier 45 days in advance about proposed price changes, or alert the competitor far in advance about proposed new service packages or offerings, is not in the public interest. Such a requirement would inhibit the incentive to lower prices and stifle innovation. The Common Carrier Bureau was clearly aware of this fact when it recently observed that "cost support materials might provide competitors with access to information that is competitively sensitive." <sup>71/</sup> Moreover, the Commission has concluded in a more general context that tariff forbearance

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<sup>70/</sup> NCRA Comments at 26-29.

<sup>71/</sup> Waiver Order at ¶ 6. See also Tariff Requirements for Nondominant Common Carriers, CC Docket No. 93-36, Notice of Proposed Rulemaking, FCC 93-103 at ¶ 12 ("We tentatively conclude that, as a matter of policy, existing tariff regulation of nondominant carriers inhibits price competition, service innovation, entry into the market, and the ability of firms to respond quickly to market trends."). Several parties underscored these points in their comments submitted in CC Docket No. 93-36. See Comments of McCaw at 3 ("Full-blown tariffing requirements would result in higher costs to subscribers by establishing clear price floors and removing incentives to reduce rates."); MFS Communications Company, Inc. at 10-11; Information Technology Association of America at 5; Local Area Telecommunications, Inc. at 6-7.

"has played a major role in the rapid development of competition." <sup>72/</sup>

#### CONCLUSION

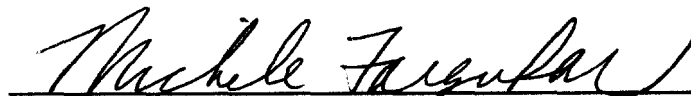
For the foregoing reasons, CTIA requests that the relief requested in its Request for Declaratory Ruling and Petition for Rulemaking be granted. <sup>73/</sup>

Respectfully submitted,

Cellular Telecommunications  
Industry Association



Michael F. Altschul  
Vice President and General Counsel



Michele C. Farquhar  
Vice President, Law and Regulatory Policy

Two Lafayette Centre, Suite 300  
1133 21st Street, N.W.  
Washington, D.C. 20036  
(202) 785-0081

Dated: April 5, 1993

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<sup>72/</sup> Tariff Filing Requirements for Interstate Common Carriers, 7 FCC Rcd. at 8079. The Federal Energy Regulatory Commission has reached the same conclusion. See Associated Gas Distributors v. FERC, 824 F.2d 981, 1010 (D.C. Cir. 1987, cert. denied, 485 U.S. 1006 (1988)).

<sup>73/</sup> The CTIA Petition also requested specific rule changes to simplify the tariffing process for cellular carriers. After the Petition was filed, the Commission initiated a rulemaking proceeding in which it proposes to further simplify the tariff procedures for nondominant carriers. Tariff Filing Requirements for Nondominant Carriers, Notice of Proposed Rulemaking, CC Docket No. 93-96, FCC 39-103 (released Feb. 19, 1993). CTIA submits that all streamlined procedures applied in CC Docket No. 93-36 should apply to cellular carriers in the event they are designated nondominant in this proceeding. Under these circumstances, the Commission would not need to address the specific rule changes requested by CTIA.

**CERTIFICATE OF SERVICE**

I, Kimberley Garnes, hereby certify that on this 5th day of April, 1993, copies of the foregoing Reply Comments of Cellular Telecommunications Industry Association were served via United States Mail upon the following:

Scott K. Morris  
Vice President, Law  
McCaw Cellular Communications,  
Inc.  
5400 Carillon Point  
Kirkland, Washington 98033

Charles P. Featherstun, Esq.  
BellSouth Corporation  
1133 21st Street, N.W.  
Suite 900  
Washington, D.C. 20036

William F. Adler  
Pacific Telesis  
Suite 400  
1275 Pennsylvania Ave., N.W.  
Washington, D.C. 20004

Wayne Watts  
Linda Hood  
Southwestern Bell Mobile  
Systems, Inc.  
17330 Preston Road, Ste. 100A  
Dallas, Texas 75252

Martin T. McQue  
Linda Kent  
United States Telephone  
Association  
900 19th Street, N.W., Ste.  
800  
Washington, D.C. 20006-2105

Richard M. Tettelbaum  
Jerome K. Blask  
Comcast Cellular  
Communications, Inc.  
Gurman, Kurtis, Blask &  
Freedman, Chartered  
1400 16th Street, N.W., Suite  
500  
Washington, D.C. 20036

Carolyn C. Hill  
ALLTEL Mobile Communications,  
Inc.  
Suite 1000  
1710 Rhode Island Avenue, N.W.  
Washington, D.C. 20036

Jay M. Rosen  
GTE Mobile Communications,  
Inc.  
245 Perimeter Center Parkway  
Atlanta, Georgia 30346

John T. Scott, III  
Bell Atlantic Mobile Systems,  
Inc.  
Bell Atlantic Metro Mobile  
Companies  
Crowell & Moring  
1001 Pennsylvania Avenue, N.W.  
Washington, D.C. 20004

Thomas J. Casey  
Jay L. Birnbaum  
David H. Pawlik  
New Par  
Skadden Arps Slate Meagher &  
Flom  
1440 New York Avenue, N.W.  
Washington, D.C. 20005

Judith St. Ledger-Roty  
National Cellular Resellers  
Assn. Reed Smith Shaw & McClay  
1200 18th Street, N.W.  
Washington, D.C. 20036

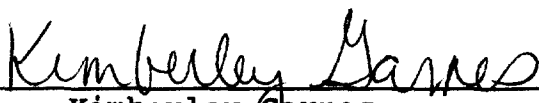
W. Bruce Hanks, President  
Century Cellunet, Inc.  
100 Century Park Avenue  
Monroe, Louisiana 71203

\*Gregory J. Vogt, Esq.  
Chief, Tariff Division  
Common Carrier Bureau  
Federal Communications  
Commission  
1919 M Street, N.W., Room 518  
Washington, D.C. 30554

\*Judith Argentieri  
Tariff Division  
Common Carrier Bureau  
1919 M Street, N.W., Room 518  
Washington, D.C. 20554

\*Mr. John Cimko, Jr.  
Chief, Mobile Services Bureau  
Federal Communications  
Commission  
1919 M Street, N.W., Room 644  
Washington, D.C. 20554

\*International Transcript Service  
2100 M Street, N.W., Suite 140  
Washington, DC 20554

  
\_\_\_\_\_  
Kimberley Carnes

\* By Hand Delivery